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| 09/664,190 | 09/18/2000 | Michael E. Ring | CDR 99333 | 3911 |

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| EXAMINER |
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BURCH, MELODY M

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3657

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08/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 09/664,190 | Applicant(s) RING ET AL. | |
| | Examiner Melody M. Burch | Art Unit 3657 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claims 1, 18, and 19. The claim limitation uses the phrase “means for” or “step for”, but it is modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because claim 1 recites a “two-position, three-way valve means connected intermediate said source of fluid pressure and said release cylinder for causing said release cylinder to release such hand brake system”, “a first valve actuation means...for causing said valve means to initiate communication of fluid pressure from said source of fluid pressure to said release cylinder”, and “a second valve actuation means...for causing said valve means to initiate communication of fluid pressure from said source of fluid pressure to said release cylinder.” Claim 18 recites “a valve means connected intermediate said source of fluid pressure and said release cylinder for causing said release cylinder to release such hand brake system.” Claim 19 recites “an electrically operable valve means...for causing said release cylinder to release such hand brake system”, “an electrically operable first valve actuation means...for causing said valve

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means to initiate communication of fluid pressure from said source of fluid pressure to said release cylinder”, and “an electrically operable second valve actuation means...for causing said valve means to initiate communication of fluid pressure from said source of fluid pressure to said release cylinder.”

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase “means for” or “step for” is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.

If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase “means for” or “step for”).

The remaining claims are indefinite due to their dependency from claim 1.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(e)(2) as being anticipated by US Patent 6394559 to Ring et al.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Re: claim 1. Ring et al. show in figure 2 apparatus to enable automatic release of a railway vehicle hand brake system 11 from either side of such vehicle, said apparatus comprising: (a) a source 14 of fluid pressure engageable with such vehicle; (b) a release cylinder 40 operable by fluid pressure connected to a hand brake mechanism, such hand brake mechanism engageable with a brake system disposed on such vehicle; (c) a valve means 48 connected intermediate said source of fluid pressure and said release cylinder for causing said release cylinder to release such hand brake system; (d) a first valve actuation means 54 disposed on a first or upper side of such vehicle and connected intermediate said valve means and said source of fluid pressure by way of conduits and element 38 for causing said valve means to initiate communication of fluid pressure from said source of fluid pressure to said release cylinder; and (e) a second valve actuation means 38 disposed on an opposed second or bottom side of such vehicle and connected intermediate said valve means and said source of fluid pressure by way of conduits and element 54 for causing said valve means to initiate communication of fluid pressure from said source of fluid pressure to said release cylinder.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-19 are rejected under 35 U.S.C. 103(a) as being obvious over Ring et al. '559 in view of US Patent 6848754 to Ring et al.

The applied reference has a common assignee and at least one common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Re: claims 2 and 18. Ring et al. '559 is silent with regards to the limitation wherein the first valve actuation means and the second valve actuation means are pneumatic actuators since the reference only shows one as being a pneumatic actuator.

Ring et al. '754 teaches in col. 7 lines 25-27 that a valve actuation means may be electrically controlled, pneumatically controlled, or a combination.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the electrically controlled valve means of Ring et al. '559 to have been pneumatically controlled, in view of the teachings of Ring et al. '754, in order to provide a functionally equivalent means of regulating fluid flow.

Re: claims 3-5 and 11-13. Ring et al. '559 is silent with regards to the relatively small reservoir, check valve and choke as recited.

Ring et al. '754 teaches in figure 6 the use of a relatively small reservoir 50 connected intermediate a source of fluid pressure 76 and two valve actuation means 46 or 56 and 62. Ring et al. '754 also teaches in figure 6 the use of a check valve connected intermediate the source of fluid pressure and the relatively small reservoir and a choke connected intermediate the source of fluid pressure and the check valve.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the arrangement of the system in Ring et al. '559, as modified, to have included a relatively small reservoir and a check valve and choke to further control the pressure conditions within the apparatus depending on application.

Re: claims 6, 7, 14, and 15. Ring et al. '559, as modified, are silent with regards to the capacity amount of the small reservoir or the diameter of the choke.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the capacity amount of the small reservoir of ring et al. '559 to have been about 80 cubic inches or the choke diameter to have been about .006 in. since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Re: claim 8. Ring et al. '559, as modified, teach in figure 2 of Ring et al. '559 the limitation wherein the apparatus further includes a choke 56 connected intermediate the valve means and both the first valve actuation means and the second valve actuation means as broadly recited by virtue of the system connection as shown since the claim does not recite a connection that is fluidly intermediate.

Re: claims 9, 10, 16, and 19. Ring et al. '559 is silent with regards to the limitation wherein the first valve actuation means and the second valve actuation means are electrically operated since the reference only shows one as being electrically operated.

Ring et al. '754 teaches that a valve actuation means may be electrically controlled or pneumatic in the form of pushbutton control.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the pneumatic controlled valve means of Ring et al. '559 to have been electrically controlled, in view of the teachings of Ring et al. '754, in order to provide a functionally equivalent means of regulating fluid flow. The power source in the form of a batter is shown at element 60 in figure 2 of Ring et al. '559.

Re: claim 17. Ring et al. '559 is silent with regards to the capacity amount of the source of fluid pressure.

Ring et al. '754 teach the use of a fluid pressure source 76 having a capacity of about 3500 cubic inches.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the fluid pressure source of Ring et al. '559 to have been about 3500 cubic inches, as taught by Ring et al. '754, in order to provide sufficient capacity to handle emergency situations.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the capacity amount of the source of fluid pressure to have been about 3500 cubic inches since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Double Patenting

7. In order to complete the record, it should be noted that no conflict appears to presently exist between the subject matter defined by the instant claims and the subject matter of the claims of applicant's and/or assignee's copending application no. 09/664211 (US Patent 6394559) which has been made of record. Accordingly, no double patenting rejection is entered into the instant application. See MPEP 804+ concerning double patenting type of rejections, if necessary. Applicant and/or assignee should maintain this clear line of patentable distinction between the instant claims and

the claims of the indicated patent application. The independent claims in the '559 patent are directed to brake application instead of release.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection based on a different interpretation of the Ring et al. '559 reference.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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August 3, 2009

/Melody M. Burch/
Primary Examiner, Art Unit 3657